

## PART 777—MITIGATION OF ENVIRONMENTAL IMPACTS TO PRIVATELY OWNED WETLANDS

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777.1 Purpose.

777.3 Background.

777.5 Federal participation policy.

777.7 Evaluation of impacts.

777.9 Mitigation of impacts.

777.11 Other considerations.

AUTHORITY: 42 U.S.C. 4321 et seq.; 23 U.S.C. 109(h), 138, 315; E.O. 11990; DOT Order 5660.1A; 49 CFR 1.48(b).

SOURCE: 45 FR 50730, July 31, 1980, unless otherwise noted.

### § 777.1 Purpose.

To provide policy and procedures for the evaluation and mitigation of adverse environmental impacts to privately owned wetlands caused by new construction of Federal-aid highway projects.

### § 777.3 Background.

Executive Order 11990, Protection of Wetlands, and DOT Order 5660.1A, preservation of the Nation's Wetlands, emphasize the important functions and values inherent in the Nation's wetlands. Federal agencies are required to avoid new construction in wetlands unless the head of the agency determines that: (a) There is no practicable alternative to such construction, and (b) the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.

### § 777.5 Federal participation policy.

(a) Those measures which the Federal Highway Administration (FHWA) and a State highway agency (SHA) find to be appropriate and necessary to mitigate adverse environmental impacts to privately owned wetlands are eligible for Federal participation where the impacts actually result from an FHWA action. The justification for the cost of proposed mitigation measures should be considered in the same context as any other public expenditure; that is, the proposed mitigation represents a reasonable public expenditure when weighed against other social, economic, and environmental values, and the benefit realized is commensurate

with the proposed expenditure. Mitigation measures shall give like consideration to traffic needs, safety, durability, and economy of maintenance of the highway.

(b) It is FHWA policy to permit, consistent with the limits set forth in this part, the expenditure of Federal-aid highway funds for the acquisition of land or interests therein for the purpose of mitigating environmental damages when privately owned wetlands are directly affected by a Federal-aid highway project.

[45 FR 50730, July 31, 1980, as amended at 52 FR 8250, Mar. 17, 1987]

### § 777.7 Evaluation of impacts.

(a) The extent of Federal-aid participation in measures to mitigate adverse highway impacts to privately owned wetlands should be directly related to:

(1) The importance of the impacted wetlands, and

(2) The highway impact on the wetlands.

(b) Evaluation of the importance of the impacted wetlands should consider:

(1) The primary functions of the wetlands (e.g., flood control, wildlife habitat, erosion control, etc.);

(2) The relative importance of these functions to the total wetland resource of the area; and

(3) Other factors such as uniqueness, esthetics, etc.

(c) A determination of the highway impact should focus on how the project affects the stability and quality of the wetlands. This evaluation should consider the short- and long-term effects on the wetlands and the importance of any loss such as:

(1) Flood control capacity,

(2) Erosion control potential,

(3) Water pollution abatement capacity, and

(4) Wildlife habitat value.

[45 FR 50730, July 31, 1980, as amended at 52 FR 8250, Mar. 17, 1987]

### § 777.9 Mitigation of impacts.

There are a number of actions that can be taken to minimize the impact of highway projects on privately owned wetlands. In order to qualify for Federal-aid highway funding, actions to